Exhibit E

Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL No. 1456
	Civil Action No. 01-CV-12257-PBS
THIS DOCUMENT RELATIONS TO ALL ACTIONS	Judge Patti B. Saris

[PROPOSED] ORDER DENYING PLAINTIFFS' MOTION FOR A PROTECTIVE ORDER REGARDING SUBPOENAS TO PUTATIVE CLASS MEMBERS

For the reasons stated in open Court at the Status Conference on March 8, 2004, Plaintiffs' Motion for a Protective Order Regarding Subpoenas to Putative Class Members [Docket No. 632] hereby is DENIED.

Dated: March 26, 2004

The Honorable Patti B. Saris

You had some mini-rules you wanted to talk to me about.

MR. BERMAN: I do. Do you mind taking some time because I think they're important?

THE COURT: We'll start with your important mini-rule and go down.

MR. BERMAN: Well, I guess the most important mini-rule is, we think in whatever case management order you enter there has to be what we call an automatic deposition rule, meaning that if we send the deposition notice out, you've got to produce a witness within 21 days if we can't reach agreement.

THE COURT: For deposition or for designation?

MR. BERMAN: Both. It's a problem with both. The plaintiffs have yet to be able to take a 30(b)(6) deposition in six months. We think there needs to be a rule, if we send out a 30(b)(6) notice, you have to produce a witness in 45 days. If we send out a deposition notice --

THE COURT: You said 45 days?

MR. BERMAN: Yes, because sometimes it takes a long time to find the right person on a 30(b)(6). We understand that. We send out a deposition notice on a fact witness -- we've now gone through the documents, we've identified some people -- you've got to give us a date within 21 days unless we agree otherwise.

Otherwise, whatever schedule you set, we're going to be where we are now. We just really haven't gotten very far, I hate to report to the Court, because of a time lapse. It works both ways. They're not happy with our responsiveness. The rule applies to us as well. I have a few other things like this.

THE COURT: I'm glad you reminded me of that. I do think -- one of the concerns I've had is on this issue of ERISA preemption, not really knowing what's out there, what the plans are, how much the plans will affect damages. What are the different kinds of plans? Are they hinged on AWP? Aren't they?

Normally, I'm not sympathetic to class discovery. In this case it may be critical to understanding not just preemption issues but also what's typical. And so I do think you need to be responsive to producing plans at the very least or a few -- I don't even know if there are different kinds of ERISA plans even among the plaintiffs.

MR. BERMAN: All our plans are plans to -- almost all of them have been deposed and are producing documents already.

THE COURT: All right. If there are a few -- I don't know. I assume you're not going to take a deposition of every ERISA plan in America.

MR. WISE: No. I can answer that question no.

THE COURT: I'm just simply saying it may be helpful

to find out if these plans are typical of other plans. That's different from -- I'm not authorizing discovery of the people who have cancer who are getting the drugs. I think that's a different situation, and I don't believe that defendants are looking for that. But I think the different -- while it's rare, I think this wouldn't be a bad case for it.

MR. BERMAN: We agree that this is a case where there has to be some discovery, a fair amount of discovery, before the class motion is ripe, both sides.

THE COURT: Right. All I'm saying is you had a motion to preclude class discovery. While I certainly will grant that with respect to anybody who's sick and receiving drugs directly as part of a Medicare Part B, I think the plans themselves are able to protect themselves. And they're usually not confidential, right? Aren't they usually distributed to their members? There's nothing that I can imagine that would be a problem with that.

MR. WISE: It's not in our interest to be burdensome to that community. What we want to do is just develop enough information so we can present a sample of what --

THE COURT: I think that's appropriate because I remember looking at the case law on it. To some extent I was not sure what the plans would provide. I think no one here really probably was at that time other than the named plaintiffs. What's out there?

MR. WISE: And whether anything is typical of anything. That's exactly going to be the issue.

THE COURT: There was a motion to intervene. I don't see why I wouldn't allow that for the --

MR. WISE: Together Rx.

MR. KOCIUBES: It will change the scope again. As your Honor noted -- well, there are two things. We've already addressed -- unless your Honor wants me to, I won't, which is the futility. But the first issue is we had understood from your Honor that you didn't want the scope of the case to expand again. And what at least --

THE COURT: They asserted on behalf of both classes, and then you brought up standing. So no big surprise that they found somebody.

MR. KOCIUBES: For sure. But at the same time what you're doing now is you're expanding the scope of that. There's no question about that. What this really is is a substantive amendment to the complaint again.

THE COURT: Not really. Did you change any of the allegations in the complaint?

MR. BERMAN: The class is exactly the same. There's just a different plaintiff for the standing issues.

THE COURT: I allow the motion to intervene. I allow your motion for discovery into the different kinds of ERISA plans for typicality.